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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/681,740

10/09/2003

Ronald D. Berger

2784-36

8147

23117

7590

03/13/2008

NIXON & VANDERHYE, PC
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ARLINGTON, VA 22203

EXAMINER

GETZOW, SCOTT M

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

03/13/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/681,740	Applicant(s) BERGER, RONALD D.	
	Examiner /Scott M. Getzow/	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claim Rejections - 35 USC § 102

1. Claims 1-9,11,12 are rejected under 35 U.S.C. 102(e) as being anticipated by Alferness et al (6,169,922).

See previous office action.

Claim Rejections - 35 USC § 103

2. Claims 10,13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alferness et al (6,169,922) in view of Heilman et al (4,030,509).

See previous office action.

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of

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this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The remarks made by applicant have been considered, however the above rejection are still deemed to be proper. First, an electrode located inside the patient's heart is not positively set forth in the claims, but merely the intended operation of the device if an electrode were located inside the patient's heart. Second, as mentioned in the previous office action, col. 10:18+ of Alferness teaches that the individual fibers can be selectively metallized and

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therefore serving as the electrode conductors.

Consequently, Alferness can be fairly interpreted as having the ability to stimulate at least 50% of the heart using only one electrode. Since the fibers 21a and 21b touch each other, as shown in figure 9, they can be considered to be one electrode. As such, as is well known in the art, in operation the other electrode could be the housing of the ICD or an electrode inside the heart.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Scott M. Getzow/ whose telephone number is (571) 272-4946. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number

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for the organization where this application or
proceeding is assigned is 571-273-8300.

Information regarding the status of an application
may be obtained from the Patent Application Information
Retrieval (PAIR) system. Status information for
published applications may be obtained from either
Private PAIR or Public PAIR. Status information for
unpublished applications is available through Private
PAIR only. For more information about the PAIR system,
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(toll-free). If you would like assistance from a USPTO
Customer Service Representative or access to the
automated information system, call 800-786-9199 (IN USA
OR CANADA) or 571-272-1000.

/Scott M. Getzow/
Primary Examiner
Art Unit 3762

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SMG